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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DAVID M. HORWITZ et al., Plaintiffs and Respondents, v. CITY OF LOS ANGELES, Defendant and Respondent; MEHR Z. BEGLARI et al., Real Parties in Interest and Appellants.	B204545 (Los Angeles County Super. Ct. No. BC271518)

APPEAL from orders of the Superior Court of Los Angeles County. David C. Velasquez, Judge. Affirmed.

Law Office of Mark E. Baker, Mark E. Baker and Catherine M. Adams for Real Parties in Interest and Appellants.

Paul, Hastings, Janofsky & Walker, Ronald M. Oster and Jason M. Frank for Plaintiffs and Respondents.

Rockard J. Delgadillo, City Attorney, Tayo A. Popoola and Colleen M. Courtney, Deputy City Attorneys for Defendant and Respondent.

This case concerns the enforcement of a peremptory writ of mandate (the writ) issued by the trial court and affirmed by Division One of this court in *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344 (*Horwitz*). The writ required respondent City of Los Angeles (City) to revoke building permits and a certificate of occupancy for a remodeled residence owned by appellants and real parties in interest Mehr and Vickey Beglari (appellants). Appellants challenge the trial court's finding that the City improperly reinstated the building permits and certificate of occupancy pursuant to an improperly applied exception for determining a setback requirement imposed by the Los Angeles Municipal Code (municipal code or L.A.M.C.). Appellants also challenge the trial court's orders requiring the City to order appellants to comply with the setback provisions and to take enforcement measures against appellants if they fail to comply with the order within 60 days. We affirm the trial court's orders.

BACKGROUND

1. The Writ of Mandate

The facts underlying the issuance of the writ are set forth in *Horwitz, supra*, 124 Cal.App.4th 1344. We restate the relevant facts as necessary. Appellants own a house located at 909 Greentree Road in the Rustic Canyon area of Pacific Palisades. (*Id.* at p. 1347.) In 2000, appellants submitted permit applications to the City to obtain approval for an addition to their home at 909 Greentree Road that reduced the front yard setback, increased the height of the structure, and reduced the width of a side yard. (*Ibid.*) In their permit applications, appellants miscalculated the prevailing front yard setback, and the City accepted those miscalculations as the basis for issuing the building permits. As a result, appellants obtained approval to build an expanded structure 14 feet closer to the street than permitted under the municipal code. (*Id.* at pp. 1356-1357.)

In April 2003, respondent David Horwitz and other nearby property owners (collectively, respondents) sued the City for declaratory and injunctive relief, asking the court to compel the City to revoke appellants' building permits and issue a stop work

order.[1] Respondents subsequently filed an amended pleading seeking relief by administrative mandamus. (*Horwitz, supra*, 124 Cal.App.4th at p. 1352.) After a hearing on the issue, the trial court concluded that the City's calculation of the prevailing front yard setback for appellants' residence was not supported by any reasonable interpretation of the municipal code. (*Ibid.*) On October 10, 2003, the trial court entered judgment granting respondents' petition for writ of mandate and issued a writ requiring the City to revoke appellants' building permits and certificate of occupancy.

Appellants and the City appealed the trial court's ruling, and Division One of this court affirmed the judgment, concluding that appellants' residence "must conform to the mandatory requirements of the zoning ordinance" because under that ordinance, "the City has no discretion to issue a permit in the absence of compliance." (*Horwitz, supra*, 124 Cal.App.4th at pp. 1355-1356.) On March 23, 2005, the Supreme Court denied appellants' petition for review, and the writ and judgment became a final decision binding on appellants and the City.

2. Post Writ Actions

After the writ was issued, respondents made repeated efforts to get the City to take action to enforce the writ. On May 25, 2005, the City sent a letter to appellants revoking the building permits and certificate of occupancy issued for the residence at 909 Greentree Road. On January 5, 2006, the City issued an order to comply requiring appellants to bring the residence at 909 Greentree Road into compliance with the municipal code by February 20, 2006.

While appellants' challenge to the writ was pending on appeal, appellants acquired another property located at 921 Greentree Road. This property is one of four lots used to

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[1] Respondents also challenged the permits issued to appellants by way of an appeal to the City's Board of Building and Safety Commissioners. (*Horwitz, supra*, 124 Cal.App.4th at p. 1347.) The administrative proceedings are described further in *Horwitz*. In brief, the Board of Building and Safety Commissioners rejected respondents' challenges, and respondents then appealed to the City's Office of Zoning Administration. The Zoning Administrator found that appellants' expansion encroached 14 feet into the required front yard setback. Appellants appealed to the City Planning Commission, and the Commission overturned the Zoning Administrator's ruling.

calculate the prevailing front yard setback applicable to appellants' residence at 909 Greentree Road. (*Horwitz, supra*, 124 Cal.App.4th at p. 1349.) On July 25, 2005, appellants filed an application for a permit to attach a canopy to an outdoor fireplace at 921 Greentree Road. On January 13, 2006, the City issued a permit for the canopy at 921 Greentree Road. On that same day, appellants applied for reinstatement of the previously revoked permits for 909 Greentree Road. Appellants' application for reinstatement of the revoked permits stated that although "no physical changes have been made to the existing building," reinstatement was justified because of changed circumstances. The only change that had occurred since issuance of the writ, however, was the construction of the canopy at 921 Greentree Road. Appellants claimed that the canopy changed the prevailing setback calculation for all structures on the block, including their residence at 909 Greentree Road. Based on appellants' claim of changed circumstances, the City reinstated the building permits and certificate of occupancy that were the subject of the writ, relying on an exception to the front yard setback requirement, referred to as the projecting building exception, codified at municipal code section 12.22C5.

3. The OSC

When respondents learned that the City had reinstated the building permits and certificate of occupancy that were the subject of the writ, they filed an application for an order to show cause re contempt for failure to comply with the writ (OSC). The trial court issued the OSC against the City and the City's general manager of the Department of Building and Safety. In issuing the OSC, the trial court explained that it "was concerned whether the revocation of the initial building permits, followed by the re-issuance of new permits under another code section was only a pretext used by [the City] to circumvent the peremptory writ and subsequent order of the Court of Appeal."

4. The Settlement Agreement

All parties then stipulated to attend a settlement conference that culminated in a settlement agreement between respondents and the City. The settlement agreement, which was expressly conditional on court approval, established a procedure for resolving the parties' disputes. Under the terms of the settlement agreement, the trial court was to

sever and separately adjudicate the validity of the 921 Greentree Road canopy permit and the recalculation of the front yard setback for 909 Greentree Road. The settlement agreement referred to this issue as the "projecting building exception" and the judicial hearing on this issue as the "adjudication." All parties, including appellants, were allowed to participate in the adjudication.

Respondents and the City further agreed that if the trial court were to rule in the adjudication that the projecting building exception had been properly applied to the facts of this case, then the City would be permitted to reinstate the building permits and certificate of occupancy for 909 Greentree Road, and the writ would be discharged. If, on the other hand, the trial court were to rule that the projecting building exception had not been properly applied, then the City agreed not to reinstate the permits and certificate of occupancy for 909 Greentree Road unless and until appellants brought the property into compliance with the municipal code.

The settlement agreement also provided for disposition of the contempt proceedings. The parties agreed that following the adjudication, the trial court was to dismiss the contempt proceedings against the City and its manager of the Department of Building Services, regardless of the outcome of the adjudication.

5. The Adjudication

The adjudication took place on September 10, 2007. Appellants appeared and moved to dismiss the proceedings on the ground that the trial court lacked jurisdiction to conduct the adjudication. The trial court denied the motion, noting that under Code of Civil Procedure section 1097, it was authorized to make any orders necessary and proper for the complete enforcement of the writ.

Respondents and the City presented documentary evidence, stipulated facts, and the testimony of several witnesses, including current and former employees in the City's Department of Building and Safety. Following the adjudication, the trial court issued a tentative ruling and proposed statement of decision in favor of respondents. The trial court entered its final ruling on November 5, 2007, in which it found that the City had improperly applied the projecting building exception in determining the prevailing

setback requirement for appellants' residence at 909 Greentree Road. The trial court ordered the City to issue to appellants an order to comply with the setback requirements of the municipal code and prohibited the City from reinstating or issuing permits for 909 Greentree Road unless and until appellants took lawful measures to bring the property into compliance with the municipal code. This appeal followed.

APPELLANTS' CONTENTIONS

Appellants contend the trial court lacked jurisdiction to adjudicate the projecting building exception; the trial court improperly denied their motion to discharge the writ of mandate; the adjudication violated appellants' right to due process and equal protection; the trial court erred in interpreting the projecting building exception; and the trial court erred in refusing to stay the case when appellants filed two previous appeals.

DISCUSSION

I. Standard of Review

We review the trial court's legal determinations, including its interpretation of the applicable municipal code provisions, under the de novo standard of review. (*Horwitz, supra*, 124 Cal.App.4th at p. 1354.) We review the trial court's factual determinations for substantial evidence. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

II. Jurisdiction

Appellants contend the trial court lacked jurisdiction to conduct the adjudication and to issue the November 5, 2007 minute order because the City fully complied with the writ on May 25, 2005, by revoking the permits and certificate of occupancy issued for 909 Greentree Road and because the settlement agreement rendered the contempt charges against the City moot. As we discuss, the trial court had continuing jurisdiction under Code of Civil Procedure section 1097 to conduct the adjudication and to issue the subsequent orders.

It is "a well settled rule that the court which issues a writ of mandate retains continuing jurisdiction to make any orders necessary and proper for the complete enforcement of the writ. [Citations.]" (*Professional Engineers in Cal. Government v.*

State Personnel Bd. (1980) 114 Cal.App.3d 101, 109 (*Professional Engineers*).) A court's authority to do so is codified in Code of Civil Procedure section 1097.[2] That statute "authorizes three methods by which a court may enforce a peremptory writ of mandate: (1) a court may impose a fine not exceeding $1,000; (2) a court may order the disobedient party to be imprisoned until the writ is obeyed; and (3) a court may make any order necessary and proper to enforce the writ. . . . [¶] The third method, allowing the court to order compliance, is the least severe and thus only requires that a court find that such an order is necessary and proper under the circumstances." (*King v. Woods* (1983) 144 Cal.App.3d 571, 577-578 (*King*).)

The authority to make orders necessary to enforce a writ is "an inherent power of a court issuing a writ" and would exist even in the absence of the express statutory grant in Code of Civil Procedure section 1097. (*King, supra*, 144 Cal.App.3d at p. 578, citing *Hobbs v. Tom Reed Gold Mining Co.* (1913) 164 Cal. 497, 501.) The power to order compliance with a writ is therefore not dependent on a showing of willfulness or persistent refusal to comply, but may be used when there is any inadequacy in the compliance with the writ. (*King*, at p. 578.)

The trial court had continuing jurisdiction to adjudicate the projecting building exception, to order the City to issue to appellants an order to comply with the setback requirements imposed by the municipal code, and to prohibit the City from issuing new permits to appellants until they complied with the setback requirements. (Code Civ. Proc., § 1097; *King, supra*, 144 Cal.App.3d at p. 578.) Appellants' argument that the trial court lacked jurisdiction to order anything not specifically presented in the mandate

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[2] Code of Civil Procedure section 1097 provides: "When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ."

proceeding is legally incorrect. The trial court's authority to enforce the writ was not circumscribed by the terms of the writ itself. (See *Housing Authority of Los Angeles v. City of Los Angeles* (1953) 40 Cal.2d 682, 688 [in proceeding to enforce writ of mandate compelling city to perform construction agreements, court had authority to order city to annex certain property, even though issue of annexation was not "specifically presented" in the original mandate proceeding].) As discussed, the trial court's jurisdiction included the authority to "make any orders necessary and proper for the complete enforcement of the writ." (*Professional Engineers, supra,* 114 Cal.App.3d at p. 109.)

Appellants' argument that the trial court's jurisdiction ended, and that the writ should have been discharged when the City "fully complied" with the writ on May 25, 2005, by revoking the permits and certificate of occupancy issued for 909 Greentree Road is disingenuous, at best. The City's subsequent reinstatement of those same permits and certificate of occupancy came squarely within the trial court's continuing jurisdiction to order compliance with the writ. (Code Civ. Proc., § 1097; *King, supra*, 144 Cal.App.3d at p. 578.)

The settlement agreement between respondents and the City did not invalidate the trial court's inherent jurisdiction to order compliance with the writ, nor did it render the issues to be adjudicated moot. The settlement agreement did not resolve all disputes between the City and respondents, but established a procedure for resolving those disputes. An essential element of that procedure was the adjudication, which would determine whether the City could validly reinstate the building permits and certificate of occupancy for 909 Greentree Road based on its application of the projecting building exception; or whether appellants would be required to bring the property into compliance with the setback requirements imposed by the municipal code. The adjudication was not, as appellants contend, an "advisory opinion," but a procedure for enforcing the writ.

III. Due Process and Equal Protection Claims

Appellants' claims that the adjudication violated their rights to due process and equal protection are without merit. Appellants do not dispute that they had both notice of, and the opportunity to participate in the adjudication, but that they declined to do so.

Their voluntary nonparticipation in the adjudication does not entitle them to argue on appeal that they were denied meaningful due process in that proceeding. Appellants provide no support whatsoever for their claim that they "will apparently be the only citizens in the City of Los Angeles who are prohibited from using the Projecting Building Exception" in order to avoid the front yard setback requirements otherwise applicable to their residence, and we accordingly disregard that argument.

IV. Adjudication of the Projecting Building Exception

When the City reinstated the permits and certificate of occupancy that were the subject of the writ, it relied on an exception set forth in municipal code section 12.22C5, referred to as the projecting building exception. Municipal code section 12.22C5 states in pertinent part:

> **"Front Yard – Adjoining Projecting Buildings** – Where a lot adjoins only one lot having a main building . . . which projects beyond the established front yard line and has been so maintained since the article became effective, the front yard requirement . . . of such lot . . . may be the average of the front yard of the said existing building and the established front yard line."

The phrase "the article" in section 12.22C5 refers to article 2 of chapter 1 of the municipal code. (See L.A.M.C., Table of Contents.) The parties stipulated that article 2 became effective on August 25, 1947. It was undisputed that the canopy at 921 Greentree Road was not in existence in 1947.

At the adjudication, the City presented evidence that it interpreted municipal code section 12.22C5 to apply to any structure, regardless of the date the structure was built, so long as the structure satisfied the applicable setback requirements at the time it was constructed. As the trial court noted in its statement of decision, however, the City presented other evidence that contradicted or was inconsistent with this interpretation.[3]

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[3] For example, an internal memorandum from the City's Chief Zoning Administrator in 1979 interpreted "the reference in [municipal code section 12.22C5] relative to how long existing main buildings are required to have existed before they may be used as projecting buildings" as a "variable time frame" rather than a historic date.

The trial court ultimately concluded, however, that the language "*and has been so maintained since the article became effective*" in section 12.22C5 clearly and unambiguously referred to a date certain -- the effective date of the article, and not a variable time as the City had contended. This issue of statutory interpretation is a question of law that we review de novo. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.)

"'As in any case involving statutory interpretation, our fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose.' [Citation.] The rules for performing this task are well established. We begin by examining the statutory language, giving it a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language in isolation; rather, we look to the entire substance of the statutes in order to determine their scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statutes' nature and obvious purposes. [Citation.]" (*People v. Cole* (2006) 38 Cal.4th 964, 974-975.) "If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history. [Citation.]" (*Ibid.*)

Appellants contend municipal code section 12.22C5 is ambiguous and can reasonably be interpreted to mean "since the article became effective *to the property in*

According to the memorandum, "an existing building which does not meet the set back requirements of the Zoning Ordinance today, but which did at the time of construction is a bonafide [*sic*] projecting building." The critical date was thus the latest date that the structure did comply with the setback requirements. The current Chief of the Engineering Bureau for the City's Department of Building and Safety testified, however, that in determining whether section 12.22C5 applies to a given structure, the City does not consider whether the structure was legally constructed unless it "looks out of place." That same witness also testified that a building qualifies as a projecting building under section 12.22C5 as long as it had either a permit for its construction or a certificate of occupancy for the work. The trial court stated that it found it "impossible" to reconcile the City's variable and sometimes inconsistent criteria for applying the projecting building exception.

question," and that it would apply to any building, regardless of the date of construction, so long as it was legally built in accordance with the setback requirements in effect at that time. Appellants' interpretation conflicts, however, with the fundamental principle that "a statute '. . . is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.' [Citation.]" (*Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097.) We cannot alter the plain language of municipal code section 12.22C5 in order to make it consistent with appellants' interpretation.

The statutory language at issue is unambiguous. Municipal code section 12.22C5 prescribes a method for calculating the prevailing front yard setback for a lot that adjoins property with a building that projects beyond the front yard line "*and has been so maintained since the article became effective*." (L.A.M.C., § 12.22C5, italics added.) It is undisputed that "the article" referred to in section 12.22C5 is article 2 of chapter 1 of the municipal code, and that article 2 became effective on August 25, 1947. To come within the statute, a building that projects beyond the front yard line must have "been so maintained since" August 25, 1947. In order for a building to "have been so maintained *since*" August 25, 1947, it had to have been in existence on that date. This common sense interpretation is consistent with the purpose of the prevailing front yard setback requirement, "to create adequate setbacks for aesthetic purposes in single-family areas and to maintain deep setbacks if such is the prevailing pattern." (*Horwitz, supra*, 124 Cal.App.4th at p. 1350, italics omitted.) Thus, "[i]f a pattern of deep setbacks exists, then logically the calculation should result in a setback that is more in keeping with the existing setbacks and not one that allows for a substantial reduction in the front yard." (*Ibid*., italics and bolding omitted.) The trial court did not err in its interpretation of municipal code section 12.22C5.

It is undisputed that the canopy constructed at 921 Greentree Road was not in existence in 1947. That structure accordingly does not qualify as a projecting building under the plain language of municipal code section 12.22C5.

V. Denial of Stay

Appellants maintain the trial court improperly refused to stay the action under Code of Civil Procedure section 916[4] when they filed two previous appeals from the trial court's orders denying motions to discharge the writ. The first appeal was from an order denying the City's motion to discharge the writ in February 2007. The second appeal, filed on September 14, 2007, was from an order denying appellants' motion to discharge the writ. Appellants abandoned both appeals, which were subsequently dismissed.

"The purpose of the automatic stay provision of [Code of Civil Procedure] section 916, subdivision (a) 'is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.' [Citation.]" (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) Appellant's abandonment of the previous appeals, resulting in their subsequent dismissal, renders moot any issue as to whether those appeals stayed further proceedings in the trial court. Moreover, we have determined that appellants' substantive appeal from the trial court's orders following the adjudication has no merit. Appellants do not suggest, nor do we ascertain, any manner in which a ruling on the decision to deny a stay could be of consequence under these circumstances. We accordingly do not address that issue. (See, e.g., *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566.)

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[4] Code of Civil Procedure section 916, subdivision (a) provides in part: "[T]he perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order."

DISPOSITION

The trial court's orders enforcing the writ are affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD